

The claimant appeared by his attorney, Russell B. Cranmer, of Wichita, Kansas. The respondent and insurance carrier, appeared by their attorney, Clifford K. Stubbs, of Lenexa, Kansas. There were no other appearances.

RECORD

(1) The documents filed of record with the Division of Workers Compensation with this docketed matter involving the transcripts of preliminary hearing heard before Administrative Law Judge George R. Robertson on November 18, 1993, with the attached exhibits.

STIPULATIONS

The respondent admits the relationship of employer/employee existed on the dates alleged.

The respondent admits parties are covered by the Kansas Workers Compensation Act.

The respondent admits written claim was timely made.

On the date of the alleged injury respondent was insured by Royal Insurance Company of America.

The parties stipulated the claimant's average weekly wage on the alleged date of injury was \$348.25.

No compensation has been paid or received in this case as a result of the alleged injuries.

ISSUES

(1) Did claimant suffer personal injury by accident arising out of and in the course of his employment from May, 1993 through and including July 6, 1993?

(2) Is claimant entitled to temporary total disability benefits beginning July 7, 1993, until released to do substantial and gainful employment?

(3) Is claimant entitled to authorized medical care with Dr. Kenneth Jansson as a result of injury suffered May, 1993 through and including July 6, 1993?

(4) Is claimant entitled to payment of outstanding medical expenses for injury suffered during the period May, 1993 through and including July 6, 1993?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) Claimant has failed to show by a preponderance of the credible evidence that he suffered personal injury by accident arising out of and in the course of his employment during the period May, 1993 through and including July 6, 1993.

Claimant was employed with Prestressed Concrete, Inc. during the times in question working on forms. He alleged an injury to his left knee during the period May, 1993 through and including July 6, 1993. During said period claimant failed to advise anyone at Prestressed Concrete, Inc. of his alleged injury with the only notice of injury coming after claimant suffered an intervening injury away from work while walking in the local Dillon's Store. Claimant testified to having immediate knee pain as a result of this slip at Dillon's which was a non work-related trauma.

K.S.A. 1992 Supp. 44-501(a) states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record."

K.S.A. 1992 Supp. 44-508(g) states:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Claimant has failed to prove by a preponderance of the credible evidence that he suffered an injury arising out of and in the course of his employment to his left knee during the period May, 1993 through and including July 6, 1993.

WHEREFORE, it is the finding, decision and order of the Appeals Board, for preliminary hearing purposes, that claimant has failed to sustain his burden of establishing a right to an award of compensation and that the Order of Administrative Law Judge George R. Robertson, dated November 19, 1993, is affirmed in all respects.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are assessed against the respondent and insurance carrier.

IT IS SO ORDERED.

Dated this _____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Russell B. Cranmer, 2831 East Central, Wichita, Kansas 67214
Clifford K. Stubbs, P.O. Box 14548, Lenexa, Kansas 66285-4548
George R. Robertson, Administrative Law Judge
George Gomez, Director